

APR 22 2003

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADEKUNBO BENSON, aka Sean Banji
Howard,

Defendant - Appellant.

No. 02-50287

D.C. No. CR-96-01881-1-RMB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Rudi M. Brewster, District Judge, Presiding

Submitted April 11, 2003**
Pasadena, California

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and
SINGLETON,** District Judge.

*/ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

*** Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

Defendant Adekunbo Benson (aka Sean Banji Howard) appeals from the 49-month sentence imposed by the district court upon revocation of Defendant's supervised release in June 2002. We affirm.

1. Citing Rule 32(h) of the Federal Rules of Criminal Procedure and Burns v. United States, 501 U.S. 129, 138-39 (1991), Defendant argues that the district court erred by failing to provide him with notice of the court's intention to "depart upward" from the Sentencing Guidelines before sentencing Defendant for violating the terms of his supervised release. Defendant's argument must fail. The U.S. Sentencing Commission has never issued binding Guidelines relating to sentencing for violations of supervised release. Chapter 7, which relates to violations of supervised release, contains "neither guidelines nor interpretations or explanations of guidelines" but merely "policy statements [that] are not binding on the sentencing judge." United States v. George, 184 F.3d 1119, 1121 (9th Cir. 1999). Because there were no binding Guidelines from which the district court could "depart," Defendant was not entitled to notice. United States v. Garcia, No. 02-50069, 2003 WL 1480344, *2 (9th Cir. Mar. 25, 2003).

A district court abuses its discretion if it fails to consider the policy statements contained in Chapter 7. United States v. Tadeo, 222 F.3d 623, 625 (9th Cir. 2000). The district court did not abuse its discretion in this case, because it

expressly considered the probation report and the advice of Chapter 7 before imposing sentence, and it explained in detail why it was sentencing Defendant to more than the recommended sentence. Garcia, 2003 WL 1480344, at *3.

2. The district court did not err by failing to provide Defendant with his right of allocution at sentencing. Before sentencing, the district court clearly afforded Defendant an opportunity to address the court, which Defendant declined. There was no error.

AFFIRMED.